

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDY HARRIS, JR., ¹	§
	§
Defendant Below-	§ No. 218, 2008
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
REBECCA THOMAS,	§ in and for Kent County
	§ File No. CK06-02611
Plaintiff Below-	§ Pet. No. 07-23901
Appellee.	§

Submitted: January 16, 2009

Decided: April 6, 2009

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 6th day of April 2009, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Andy Harris ("Father"), filed this appeal from a Family Court order awarding sole custody of the parties' minor daughter to Rebecca Thomas ("Mother"). Father contends that the Family Court erred by explicitly prohibiting visitation between Father and his daughter while Father is incarcerated. We find no merit to Father's appeal. Accordingly, we affirm the Family Court's judgment.

¹ The Court previously assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

(2) The record reflects that Father was convicted of second degree assault. The victim was Mother. Father is presently incarcerated as a result of this conviction. Following a hearing on Mother's petition for custody, the Family Court awarded sole custody to Mother and further prohibited visitation with Father during his incarceration pursuant to 13 Del. C. § 728(f).² The Family Court noted that Father could petition for visitation rights upon his release from custody.

(3) On appeal, Father's sole argument is that the Family Court's order went too far by banning any visitation between Father and his daughter, even if Mother voluntarily initiates visitation. In her response to Father's opening brief, Mother asserts that she has no intention of voluntarily taking her daughter to visit Father while he is incarcerated. Accordingly, Father's argument raises a moot point. Moreover, in custody and visitation matters, the best interests of the child are paramount.³ Even if Mother were agreeable to the child's visitation with Father while he is incarcerated, it still remains within the Family Court's

² 13 Del. C. § 728(f) provides that, "The Court shall not enter an order requiring visitation in a correctional facility if the person incarcerated has been adjudicated of committing a sex offense or felony level offense against the child with whom visitation is sought or against any other person listed in paragraph (e)(3) [including the child's other parent] of this section."

³ *Friant v. Friant*, 553 A.2d 1186, 1188 (Del. 1989).

discretion to prohibit visitation if such visitation is not in the child's best interests.⁴ Accordingly, we find no legal merit to Father's argument.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁴ 13 Del. C. § 728(a) (providing that the Family Court may deny a parent's contact with a child if the Court finds the contact would endanger the child's health or emotional development).